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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 25th April 2008

No. 4919-1i/1-(J)-11/2002/LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 11th March, 2008 in I.D. Case No. 20 of 2002 of the Presiding Officer, Labour Court Jeypore to whom the Industrial Dispute between the Management of M/s. Mangalam Timber Products Ltd., Nabarangpur and their workmen represented through the General Secretary, Mangalam Timber Products Employees Union and the General Secretary, Mangalam Timber Contractor Workers Union was referred for adjudication is hereby published as in the schedule below :—

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER LABOUR COURT JEYPORE KORAPUT
INDUSTRIAL DISPUTE CASE No. 20 OF 2002
Dated the 11th March 2008.

Present:

Shri G. K. Mishra, O.S.J.S. (Jr.Branch),
Presiding Officer,
Labour Court, Jeypore
Dist: Koraput.

Between:

The Management of
Vice President (Works.)
Vice President (Com.)
Mangalam Timber Products Ltd.,
Nabarangpur

... First-Party — Management

Vrs.

The General Secretary,
Mangalam Timber Products Employees,
Nabarangpur.

General Secretary,
Manglam Timber Contractor Workers Union,
Nabarangpur

... Second-Party — Workmen

Under Section : 10 & 12 of the Industrial Dispute Act, 1947.

Appearances :

For the Management	...	...	... Satya Narayan Sadangi, A/R of the Management.
For the Workman No. I	...	...	... Self.
For the workman No.II	...	...	... None.
Date of Argument	...	...	... 21-02-2008.
Date of Award	...	...	... 11-03-2008.

1. The Government of Orissa, in the Labour & Employment Department in exercise of the power conferred upon them under sub-section (5) of Section-12 read with clause (d) of sub-section (1) of Section (10) of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following disputes vide their order No. 14146/LE., dated the 5th December 2002 for adjudication of the following disputes :—

SCHEDULE

“ Whether the action of the Management of Mangalam Timber Products Ltd., Nabarangpur in effecting works suspension of the factory from the 7th February 2002 to 17th March 2002 is legal and/or justified ? If not, what relief the workman are entitled to ?”

AWARD

2. This is a case originated out of the reference submitted by the Government for determination of an issue pertaining to the validity and propriety of effecting work

suspension of the factory for a couple of days along with other reliefs to be granted in son subsequence thereof.

3. The laconic story presented by the union may be described, here under that, while harmonious and coordinating environment was in force in the factory with satisfaction productivity, the Management having effected work suspension between the 7th February 2002 to 17th March 2002 jeopardising the valuable right to secure their job with proper livelihood, the Workmen under the aegis of the union challenged the effectiveness of the order of work suspension with a prayer for getting their full pay during the said period as well as adequate compensation.

4. The Management, on the contrary, strongly repudiated the entire vague allegations and contended *inter alia* that, while annual “shut down operation” was effected in order to revamping the entire machineries for smooth onward functioning of the factory along with good performance in the productivity, the Workmen though were availed of the opportunity to participate in the repair work rendering help to the out side contractors, specially manned and skilled as well as dexterous for that purpose, having launched strike declaring non-co-operation for doing over time along with the involvement of anti-social activities like damage to the factory properties, man handling the superior officers or even locking the gate, restraining the out side contractors to effect repair works, the Management experienced with intractable situation of sustaining loss due to delay in functioning the factory which necessitated and propelled to find no other alternative than to effect work suspension, which was beyond their contemplation. The cause of situation having occasioned by the act of the Workmen and not out of the act of Management and there being no *malafide* intention inherent thereto, the order of work suspension can not be challenged as illegal or invalid and therefore, the Workmen can not be entitled for any wages during the said period as well as any compensation.

5. There is no dispute about the annual shut down of the factory being effected for getting repairs of the vital machineries out of which the production of the factory purely hinges. The machineries fitted in the factory are mostly brought being imported from different countries alongwith the necessary spare parts. Since there is no person available with efficiency skillful and dexterity the engineers and mechanics were requisitioned from different countries in which machineries are manufactured to effect repairs within a time bound period on contract basis. The “shut down” is being for a short period, stipulation was

provided to accomplish the execution of work within that period. So that, loss can be avoided. The Workmen during that period are allowed to render their help and assistance to the out side contractors in order to get the repair done as quickly as possible, as because the Workmen are fully equipped with the process of operation and having sufficient knowledge regarding the defects appearing in the mechinaries. Though there was no work during the said period, they used to execute the work on basis of over time for which they get their salary. No Workman is deprived of the right to work on account of such shut down period. The relationship between the employer and employee was not ceased. They were still under the control and regulation of the Management. In order to effect cordial and harmonious relationship in the Industrial atmosphere employees were given opportunity to work with full wages. This process of annual shut down in each year has been continuing since the time of it's formation or establishment and Workmen are getting their scope of doing work with wages.

6. Disquieting feature cropped up when the employees union became dis-satisfied with the Management activities to dis-approve the settlement for effecting wage revision for the last proceeding years and other anciliary benefits to be received by them. In this respect conciliation settlement was on the anvil before the Dist. Labour Officer. The situation became more tense and aggravated consequent upon the indifferent attitude shown by the Management for coming to the settlement on the demand pressed by the union. The demands put forth by the union includes wages to be received during the previous period of work suspension effected at two stages, it was a long standing demand of the employees union, which has not been duly paid heed by the Management. Prior to the effect of annual shut down the employees Union passed an unanimous resolution to render non co-operation to the repair work or not to entertain any over time work as entrusted to them by the Management. The employees Union in fact boycotted the annual shut down operation and the Management in many a time requested the union by virtue of different letters to render their co-operation without which there will be difficulties in getting the work properly done. Still the employees Union became cling to their own demand of non-co-operation. The employees Union instead of rendering co-operation became indulged in refraining or intercepting the outsiders from doing their works and also man-handled high officers and also the contractors with unfurling intimidation. In this respect the Management has requested by so many letters, on the report of victimized workers or contractors requested to be keptaway from such anti social activities. The outside engineers and mechanics being mis behaved and man handled showed their inability to

undertake repair work and also drawn the attention of the Management regarding the loss sustained by them due to failure of availing the contractual work. These matters were brought to the notice of the employees union, seeking their vibrant co-operation. The behaviors shown by the employees in committing assault to one of the contractor has been admitted by the employee concerned named one Martha and in this connection an F.I.R. was also lodged at the police station. Some of the Workmen were also arrested and put under suspension due to their anti social involvements. The repair work was kept abeyance and delay was caused in executing work within stipulated period. The Management's request made by the Vice President was also not accepted by the union. The union on the contrary wrote a letter to the Management pressing the Management to fulfill their demands with threatening to suffer consequences if the demands are not fulfilled as early as possible. The intention of the employees union to be involved in subversive activities is very much writ large and was translated in to action subsequently by the involvement of some of the Workmen in unblocking the contractors and other Workmen intended to co-operate by locking the gate and showing mis behaviors and threatening to the out siders. This might have propelled the Management to take effective steps for pacification and for relieving the hostile attitude continuing between the employer and the employees. But the attempt was ended in a smoke and became futile. The Management could not undertake repair work there by anticipated huge loss in the near future due to the non co-operation of the Workmen.

7. The right to unionism and the right to strike is a part of collective bargaining of the weaker section for the legality and humanity of the situation and the Industrial Disputes Act has also recognized such right under section 22 of the said Act. But there is some, embargo or restriction provided under section 24 to declare a strike to be illegal if it violates the conditions stipulated in Sections 22 and 23. The Union in the pretext of launching strike should not involve in subversive activities by incurring loss to the society and the corporation. Justice Krishna Ayer in *Gujarat Still Tubes Ltd., Vrs. Gujarat Still Tube Mazdoor Sabha*, 1980, (2) S.C. 593 has warned that the union should keep in mind that, the society itself in it's basic needs of existence may not be held to ransom in the name of the strike for bargain. The bargaining power of the Union could not be turned to any destructive method causing loss to the industry or company. If that attempt is resorted to the strike can not be considered as legal. The Management being anticipated to be incurring with heavy loss effected "work suspension" from the 7th February 2002 to 17th March 2002 with intimation to all the concerned. The situation was not emerged out of the

act of the Management. As per Section 25 FFF and 2-KKK of the Industrial Disputes Act, 1947, the word lay-off means the failure, refusal or inability of the employer on account of shortage of coal and power or raw materials or accumulation of stock or break down of machinery or any other reason to give employment to the Workman. The definition is general and would apply when an employer did not or could not give employment to a Workman whose name was on the Muster Rolls and who was in the continuous service for one year and who has not been retrenched on account of contingencies. From these words it is clear that, the un employment has to be on account of the cause which is independent of any action or inaction on the part of the Workman. It is neither temporary discharge of a Workman nor temporary suspension of the contractor service. It is merely a fact of temporary un employment of the Workman in the work of the Industrial Establishment. For this reason, the employer is liable to pay compensation to the Workman as per Section 25-C of the I. D. Act. and temporary suspension of work can not be effected unless a approval is sought for by the Management either from the Government or from the competent authority as per Section 25-N of the I. D. Act. In absence of any approval the temporary suspension effected can be considered as illegal and the employees are entitled to get full wages during the said period as well compensation. But the Amending Act, 1982 has substituted the words "to any other connected reason" for the words " for other reasons". It has been enounced by our own Hon'ble Supreme Court in *Cakairbetta Estate Vrs. Raja Municom*, 1960, 11nd LLJ 275, S. C., that if there is a strike or sowing down of production in one part of the establishment and if lay off is the consequence the reason for which lay off has taken place would undoubtedly the similar to the reason specified in the definition. The intention of the legislature appears to be to absolve the employer from the obligation to pay compensation where the lay off is occasioned by a strike or sowing down of production in another part of the establishment. This is applicable to some Workman who are laid off due to a strike of Workman other than those who are laid off. If all Workmen are on strike there would be no question of laying off any workman or paying any lay off compensation. Hence the workman laid off as a consequence of strikes by the some other workmen in the same establishment would not be entitled for any compensation.

8. In the instant case, the employees union has voluntarily withdrawn from their work in protest against the non fulfillment of demands. The resolution has been communicated to the Management. It is the burden of proof lying on the Workman to show that no sooner they report their duty in having their presence in the establishment they

were not supplied with any work by the Management, for which laid off can be attributed against the Management. The Management has time and again requested the union to report their joining and to participate in the repair work otherwise they would be suffered from “no pay for no work”. Despite that, the employees union voluntarily refrained from doing so and launched a strike intercepting others who are intending to do the work from entering into the premises. When there was voluntary withdrawal of work the employer’s role has got no significance for laying off the Workman. From the inception of undertaking repair work, they have not entered into the premises rather other workers were intending to do work were thwarted. The Management having experienced with the destructive work entertained by the union ultimately effected work suspension in order to prevent the employees union to do any further destruction to the property of the factory and such prevention was facilitated them to undertake repair work with in a stipulated period. The right of livelihood has been taken away by the Workman themselves by defying the request meted out the Management to do work. It is the act of the employees union the work suspension was effected. Where the Workmen have not shown their attitude to do any work during the course of shut down operation as per the request on the Management they are not entitled to receive any wages during the said period nor any compensation for the loss of work. The Management has tried a lot to bring the Workmen in to the sphere of resolution or settlement. The Workmen being imbued with hostile attitude did not create any normalcy in the situation. In the circumstances there is no justification to hold that the work suspension was originated or being the outcome of the act of the Management. The Workmen being the sole creator of the situation are laid off. In that respect they are not entitled to any wages during the period of laid off as well as compensation.

9. The employees after the lifting of work suspension have been with much devotion working under the Management securing utmost production of the factory. The Management has also gained wide increase of profit. Cordial relationship is still continuing between the Management and the employees. No hostility or ill feeling seems to be perpetuating. During the course of work suspension nothing has been gained or lost by the Management. The act of the Workmen has not created any loss to the Management and it’s production. The Workmen were allowed free to undertake job. During the non-participation in the repair work, the workmen have been paid with wages except during the period of work suspension. The Workmen though not entitled to wages for the over time allowed in their favour, they may get some wages during the period which immunity granted in their favour. Though the non-co-operation has been declared illegal resulting in

work suspension, the Management is the best judge having full discretion to consider the matter of the workmen. The Management instead of allowing full wages to the Workmen for their non participation still the Management may treat the period of absence taking the same as leave of absence. The period of absence may be treated as on leave by reducing from their leave account and pay them wages for such period, if deemed proper at his discretion. Stricking to technicalities will create or inflame hostile attitude amongst the Workmen, thereby tranquility of the atmosphere will be affected. For the purpose of securing harmonious relationship and for securing better profit and production, the Management should take in to consideration of the above suggestions and grant as much relief as required in order to befit the claim of the Workmen.

The reference is answered accordingly.

ORDER

10. The award is passed on contest. The reference is answered as per the aforesaid observation.

Dictated and corrected by me.

G. K. Mishra
11-3-2008
Presiding Officer,
Labour Court,
Jeypore, Koraput.

G. K. Mishra
11-3-2008
Presiding Officer,
Labour Court,
Jeypore, Koraput.

By order of the Governor

G. N. JENA
Deputy Secretary to Government